Iowa State Board of Education

Executive Summary

January 19, 2017

Agenda Item: In re Post-Secondary Enrollment Options of J.Z. (Clear Creek Amana Community School District)

Iowa Goal: All PK-12 students will achieve at a high level.

State Board Role/Authority: Under Iowa Code section 290.1 the State Board of Education has authority to hear appeals from local school board decisions.

Presenter: Nicole Proesch, designated Administrative Law Judge and Legal Counsel, Office of the Director

Attachments: Three

Recommendation: It is recommended that the State Board approve the proposed decision reversing and remanding the decision of the local board of directors of the Clear Creek Amana Community School District (“CCACSD”) finding that the General Chemistry 1 Course at Kirkwood Community College (“KCC”) is comparable to the Chemistry 2 courses offered at the Clear Creek Amana High School (“CCAHS”) and thus is not an eligible Post-secondary Enrollment Option course for J.Z.

Background: J.Z. and his parents live in Homestead, Iowa, and is a resident of the CCACSD. J.Z. was a ninth grade student during the 2015-2016 school year. He is currently being homeschooled, is dual enrolled with CCAHS, and is in the tenth grade. J.Z. has been identified, according to the District’s criteria and procedures, as a Gifted and Talented pupil. Because of this designation, J.Z. is eligible to attend Kirkwood Community College as a tenth grader to take classes under Post-secondary Enrollment Options Act (PSEO). In August of 2016, the appellant asked CCAHS to approve a Chemistry 1 and Chemistry 2 course at KCC as PSEO. The District compared the KCC course to courses at CCAHS and made a
recommendation to the local board that the General Chemistry 1 course at KCC was comparable to Chemistry 2 at CCAHS and thus not eligible for PSEO. The appellants appealed arguing that the District compared one course to two and that the decision was unreasonable.

The record on appeal is not clear as to what the District compared. The law and the rules clearly contemplate a one-to-one course comparison and not a two-to-one course comparison. Since the record is not clear what the District compared and what the decision of the local board was, we must find their decision is an erroneous application of the law and thus, not reasonable and overturn the decision. The District must go back and make a one-to-one comparison of the course. So long as that decision is reasonable and not an erroneous application of the law, the District’s decision on remand will not be disturbed.

Thus, it is recommended that the State Board reverse and remand the decision of the local board. The District shall consider the definitions in the statute and the rules, and make a one-to-one course comparison of each of its courses.

The Appellants have filed an Appeal of the Proposed Decision to the State Board but have not requested oral arguments in this matter, so none will be heard. The Notice of Appeal and supporting briefs are attached.
STATEMENT OF THE CASE

The Appellant, S.Z., seeks reversal of an August 17, 2016, decision by the Clear Creek Amana Community School District (“District”) Board (“Board”) finding that the General Chemistry 1 Course at Kirkwood Community College (“KCC”) is comparable to the Chemistry 2 courses offered at the Clear Creek Amana High school (“CCAHS”) and thus is not an eligible Post-Secondary Enrollment Option course for J.Z. The affidavit of appeal filed by September 15, 2016, attached supporting documents, and the school district’s supporting documents are included in the record. Authority and jurisdiction for the appeal are found in Iowa Code section 290.1. The administrative law judge finds that she and the State Board of Education (“State Board”) have jurisdiction over the parties and subject matter of the appeal before them.

An in person evidentiary hearing was held in this matter on November 8, 2016, before designated administrative law judge, Nicole M. Proesch, J.D., pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. The Appellant was present with J.Z. Superintendent Tim Kuehl (“Superintendent Kuehl”) appeared on behalf of the District and was represented by attorney Kristy Latta. Also present for the District was High School Principal Mike Moody (“Principal Moody”).

The Appellant testified in support of the appeal. Appellant’s Exhibits A-I were admitted without objections. Superintendent Kuehl and Principal Moody testified for the District and the school district’s exhibits 1-4, 7 & 8 were admitted into evidence without objection. Exhibits 5 and 6 were objected to and excluded because they were not received by the local board.

FINDINGS OF FACT

The Appellant lives in Homestead, Iowa, and a resident of the Clear Creek Amana Community School District. Her son, J.Z., was a ninth grade student attending the Clear Creek
Amana High School, during the 2015-2016 school year. He is currently being homeschooled, is dual enrolled with CCAHS, and is in the tenth grade. J.Z. has been identified according to the District’s criteria and procedures, as a Gifted and Talented pupil. Because of this designation J.Z. is eligible to attend Kirkwood Community College as a 10th grader to take classes under Postsecondary Enrollment Options Act (“PSEO”) enacted by legislature to “promote rigorous academic and vocational pursuits” for Gifted and Talented ninth and tenth graders, and eleventh and twelfth graders to take courses in an eligible postsecondary institution of higher learning. Under PSEO, a school district will provide tuition reimbursements to an eligible postsecondary institution equal to the lessor of the actual and customary costs of tuition, textbooks, materials, and fees directly or two hundred fifty dollars. Iowa Code § 261E.7(1).

The Appellant testified that after J.Z. was designated as Gifted and Talented she approached Principal Moody in the summer before the 2016-2017 school year and inquired whether J.Z. could take an Intro to Chemistry course at KCC. Principal Moody informed the Appellant that the Intro to Chemistry course at KCC was equivalent to the Chemistry 1 course at CCAHS and thus would not be eligible as a PSEO course. The Appellant accepted that answer.

In early August, J.Z. took a compass placement test at KCC and based on his scores he was advised that they would waive the Intro to Chemistry course requirement and allow him to take the General Chemistry 1 course at KCC instead. On August 15, 2016, the Appellant notified the District that she would be homeschooling J.Z. and he would dual enroll for PSEO classes. The Appellant requested that the District approve the General Chemistry 1 course as a PSEO course in the fall and for approval for General Chemistry 2 course in the spring as a PSEO course. The Appellant asked that it be placed on the Board’s agenda.

At the Board meeting on August 17, 2016, the Board heard comments from the Appellant and recommendations from Superintendent Kuehl. Superintendent Kuehl provided the Board with a course description of the Chemistry 1 course at KCC and an opinion from Mr. Muhlenbruch1 that the topics and content taught in the KCC Chemistry 1 course are covered in the chemistry class taught at CCAHS. The handout also states that CCAHS also has a semester long Chemistry 2 class that covers advanced topics not covered in the KCC Chemistry 1 class. Exhibit 4.

The Board agenda reflects that Superintendent Kuehl “recommend[s] the Board declare the General Chemistry 1 Course at Kirkwood CC equivalent to Chemistry 1/2 at CCAHS.” Exhibit 1. However, the recording of the board meeting reflects that Superintendent Kuehl recommended that “the Board to declare the General Chemistry 1 Course at Kirkwood CC equivalent with our Chemistry 2 course at the high school.” Exhibit 2. The Board moved to approve the recommendation. Exhibit 2. The minutes of the Board meeting reflect “Board declares the General Chemistry 1 course at Kirkwood CC equivalent to Chemistry 1 & 2 at CCA.” Exhibit 3. Mr. Kuehl provided clarifying testimony that the Board moved to accept his recommendation and the Board unanimously approved the recommendation.

On August 17, 2016, the Appellant filed a timely appeal with the Department. The Appellant argues that the District did not due their due diligence in comparing the courses and

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1 He has taught chemistry for CCAHS for thirty years.
that you cannot compare one course to two courses. The Appellee argues that it did compare
the courses and their decision finding the courses comparable was reasonable.

CONCLUSIONS OF LAW

The Iowa Supreme Court has stated that the standard of review for appeals under Iowa
Code section 290.1 is abuse of discretion. “[W]here a statute provides for a review of a school
district’s discretionary action, the review, by necessary implication, is limited to determining
whether the school district abused its discretion.” Sioux City Cnty. Sch. Dist. v. Iowa Dep’t of
Educ., 659 N.W.2d 563, 568 (2003). The abuse of discretion standard requires the Board to look
only at whether a reasonable person could have found sufficient evidence to come to the same
conclusion as the school district. Id. at 569; see also Iowa Code § 17A.19(10)(f)(1). If a decision
was not based upon substantial evidence or was based on an erroneous application of law we
will find the decision is unreasonable. Id. The State Board may not substitute its own judgment
for that of the school district. See id.; see also In re Matthew Davis, 14 D.o.E. App. Dec. 199, 203

The question in this appeal is whether or not the local board’s decision finding that the
General Chemistry 1 Course at Kirkwood is comparable to the Chemistry 2 course offered at the
CCAHS and thus is not an eligible Post-Secondary Enrollment Option course is reasonable and
complies with the Postsecondary Enrollment Options laws under the facts and circumstances in
this case. Thus, we must first look at the statute itself.

Iowa Code section 261E.6(3) provides:

To participate in this program, an eligible student shall make application to an
eligible postsecondary institution to allow the eligible student to enroll for
college credit in a nonsectarian course offered at the institution. A comparable
course, as defined in rules adopted by the board of directors of the school district
consistent with department administrative rule, must not be offered by the
school district or accredited nonpublic school the student attends.

Iowa Code § 261E.6(3) (emphasis added). The Department’s administrative rules
provide:

[P]ostsecondary courses eligible for students to enroll in under this division shall
be limited to: ... courses that are not comparable to courses offered by the school
district where the student attends which are defined in rules adopted by the
board of directors of the public school district. 281---IAC 22.17.

A comparable course must not be offered by the school district or accredited
nonpublic school the student attends. For purposes of these rules, “comparable”
is not synonymous with identical, but means that the content of a course provided
to a high school student for postsecondary credit shall not consist of substantially
the same concepts and skills as the content of a course provided by the school
district or accredited nonpublic school.
IAC 22.18 (emphasis added).

The Appellant argues that the District compared two District courses to one college course. However, the record is not clear what the District compared. The handout provided to the Board suggest that Mr. Muhlenbruch compared General Chemistry 1 to Chemistry 1 at CCAHS. It also suggested that Chemistry 2 at CCAHS covers advanced topics not covered in General Chemistry 1. There was no comparison with General Chemistry 1 and Chemistry 2, nor was there a comparison between General Chemistry 2 and Chemistry 2. However, the motion approved by the board was to declare the General Chemistry 1 Course at Kirkwood CC “equivalent with our Chemistry 2 course at the high school.”

The law and the rules clearly contemplate a one-to-one course comparison and not a two-to-one course comparison. Since, the record is not clear what the District compared and what the decision of the Board was, we must find their decision is an erroneous application of the law and thus, not reasonable and overturn the decision. It is not the State Board’s duty to analyze and compare these courses in the first instance on a one-to-one basis. Thus, the comparison and final decision must be made by the District. This comparison must be made by comparing course content as described in 281 --- IAC 22.18. A District cannot pay for a course at a community college that has substantially the same concepts and skills offered to students in the District’s own high school course; to do so would be supplanting. See 281 --- IAC 22.4(2)(a).

So long as that decision is reasonable and not an erroneous application of the law, the District’s decision on remand will not be disturbed. See, e.g., In re Matthew Davis, 14 D.o.E. App. Dec. at 203.

DECISION

For the foregoing reasons, the decision of the Board made on August 15, 2016, finding that the General Chemistry 1 course at Kirkwood is comparable to the Chemistry 2 offered at the Clear Creek Amana High school and thus is not an eligible Post-Secondary Enrollment Option course is REVERSED AND REMANDED. The District shall consider the definitions in the statute and the rules, and make a one-to-one course comparison of each of its courses. The State Board does not retain jurisdiction.

December 2, 2016
Date

Nicole M. Proesch, J.D.
Administrative Law Judge

Date

Charles C. Edwards Jr., Board President
State Board of Education
The Appellant, S.Z. seeks to appeal the ALJ proposed decision dated 12/2/2016, that reverses and remands the CCA School Board’s decision from 8/17/2016 regarding the comparability of a Kirkwood Community College General Chemistry I course as PSEO for an ELP student J.Z.

We feel that this decision stops short of providing relief and places an undue hardship on us.

**In re Matthew Davis, Admin. Doc. #3817:**

> In reviewing the facts of this appeal under the above-enunciated standards, we find that the District Board acted reasonably in denying Appellant’s request for tuition reimbursement for these courses. First of all, a student anticipating enrollment under this Act is required to do three things: 1) inform the school district of the intent to participate; 2) apply at the postsecondary institution; and 3) sign a statement indicating that the student and parent or guardian will be responsible for the payment of the tuition if the student fails to complete the course for credit. See, 281--IAC 22.3.

> 281--IAC 22.4. [It is the ALJ’s belief that] the determination of "comparable course" is left to the local district board, [unless the decision is based on an erroneous interpretation of the legislative code.]

The ALJ has determined that the CCA School Board did erroneously interpret the law.

In addition, the evidence supports the appellant’s assertion that she informed the school district of the intent to participate in PSEO, application was made at the postsecondary institution, and we offered in writing and into the recording at the 8/17/16 School Board meeting that we would be responsible for the payment of the tuition if the student fails to complete the course for credit.

**In re Joanne and Mark Hamilton, Admin Doc. #849, #854:**

> The district [was ordered] to reimburse the tuition paid by the appellants to Buffalo Center-Rake Community School District.

This supports our assertion that the State Board can direct the school district to reimburse the appellants for the their cost of the tuition, as they both erroneously interpreted the law, causing a delay to the student’s educational process and an undue hardship on the student and parent. The evidence further supports that the courses offered at CCA high school are not comparable, by the district’s own admission and written documentation as evidenced again and presented during the testimony and exhibits provided on November 8, 2016. This request does not constitute a money
judgement, but directs the school district to follow-through on administrative processes that would otherwise have taken place, had the school district not erroneously applied the law.

The facts in the record are undisputed facts: (1) the school’s 2016-2017 Plan of Study course guide states that their Chemistry II course “prepares a student to take an Introductory Chemistry course at the college level”, (2) Mr. Moody testified that although there are deadlines and steps for requesting a PSEO course, they have made exceptions to this, particularly when Kirkwood or the University of Iowa have allowed registration past the deadline (3) Mr. Moody and Tim Kuehl both testified that the high school’s plan of study is updated annually and reviewed by both of them to some degree and is approved by the school board. Our Exhibit D, CCA HS Plan of Study, specifically states that their Chemistry II course, taken in sequence following Chemistry I, “provide[s] a strong knowledge base for those students who plan to take an introductory college chemistry course” (4) Mr. Moody testified that he believes that a course offered in middle school is not comparable to a course offered in high school due to the increased skills taught, particularly in lab and application of concepts, in subjects such as math, biology, and chemistry.

He also testified that he believes that students are better prepared for college level coursework in Chemistry if they have taken the high school’s Chemistry I and Chemistry II consecutively. He did not testify that a student would master college level coursework, but have a foundation to build on, (5) a course that offers more rigor, faster pace, increase depth of study into concepts would supplement and not supplant a course taught at the high school.

In the ‘conclusions of law’ portion of the recommendation, ALJ noted that “if a decision was not based on substantial evidence or was based upon erroneous application of the law [you] will find the decision unreasonable’’. We believe that both are supported in this case, the board did not make its decision based on substantial evidence and they erroneously applied the law. The ALJ states this as well and orders the decision reversed and remanded.

Although, the ALJ also stated “the record is not clear what the District compared”, the testimony given by Superintendent Kuehl on November 8th, 2016 clarified the School Board’s intent to compare 2 courses to 1, and that the “scrivener’s error” referenced by Appellee’s attorney during the in-person hearing was not to be applied here, as the testimony of the Superintendent supported the written and approved minutes of the school board from their meeting dated 8/17/2016. The ALJ even asked the appellee if we needed to reference the oral evidence of the meeting recording or the minutes of record, and Superintendent Kuehl stated the board’s written minutes was the accurate record of the board’s decision. I urge you to review the recorded testimony from the 11/8/16 hearing.

Since the ALJ did decide that there was an erroneous application of the law, and has recommended the school board reverse and remand their decision, we are requesting that due to the undue financial hardship and length of time that has passed, that the ALJ also find in favor of the appellant’s request for relief in the form of $700 and convert the course taken in the
Fall 2016 at Kirkwood to a PSEO course, until the board would determine otherwise according to the provisions in 281-IAC 22.18.

In conclusion, because the district failed to perform its due diligence and erroneously applied the law when determining course comparability, we request that you find in favor of the appellees, Shawn, Borge and James Zierke, and direct the CCA School Board to determine that the General Chemistry I course at Kirkwood Community College is not comparable to their course offerings, reverse and remand their decision, and therefore the Kirkwood General Chemistry I is PSEO eligible. In addition, this would be retroactive to August 17, 2016.

Following through on that decision, Kirkwood, would then reimburse us for our costs $651 plus $40, and then request that Kirkwood convert the course to PSEO and bill the district $250. All other agreements with the district and rules regarding PSEO would remain in effect.
COMES NOW the Appellee Clear Creek-Amana Community School District ("District") and submits this Brief in Support of Proposed Decision, regarding the proposed decision rendered by the Administrative Law Judge following hearing in the above-referenced appeal.

I. The Proposed Decision Properly Remands the Comparability Issue to the District

A. The Appellant wants J.Z. to be enrolled in General Chemistry I at Kirkwood Community College as a postsecondary enrollment options class ("PSEO"), and require the District to pay the tuition.

B. However, the District believes that the course offering at Clear Creek-Amana High School is "comparable" to General Chemistry I at Kirkwood Community College, such that the class is ineligible for PSEO and not subject to tuition reimbursement. See Iowa Code § 261E.6(3); 281 Iowa Admin. Code § 22.18 (stating "comparable" is not synonymous with identical, but means that the content of a course provided to a high school student for postsecondary credit shall not consist of substantially the same concepts and skills as the content of a course provided by the school district . . . .").
C. The law is clear that the consideration and decision as to comparability is the District's to make. *See also* Iowa Department of Education Senior Year Plus Guide for Educators and Educational Administrators (“The school district shall make this determination when a student submits an application for a PSEO course.”)

D. Therefore, the proposed decision rendered by the Administrative Law Judge properly remands the comparability issue to the District for resolution.

II. The Proposed Decision Properly Rejects the Appellant’s Demand for Payment

A. The District did not approve J.Z.’s enrollment in the General Chemistry I class at Kirkwood Community College as a PSEO class, but the Appellant enrolled him in the class anyway.

B. The class is not eligible to be a PSEO class until it is so approved by the District. *See* 281 Iowa Admin. Code § 22.2(2)(a) (“The student shall have attained the approval of the school board or its designee and the eligible postsecondary institution to register for the postsecondary course.”); *see also* Iowa Department of Education Senior Year Plus Guide for Educators and Educational Administrators (“Subsequent to school board approval, an eligible student shall make application to an eligible postsecondary institution to allow the eligible student to enroll for college credit in a course offered by the institution.”).

C. The Appellant erred by enrolling J.Z. in the class without receiving permission or certification from the District that it qualified as a PSEO class. The Appellant
may not now treat this class as a PSEO class to demand the tuition payment from

D. The law is also clear that the State Board is not authorized to render judgments for
money. See Iowa Code 290.6.

E. Therefore, the proposed decision rendered by the Administrative Law Judge
properly rejects the Appellant’s demand for payment.

III. Conclusion

The purpose of the PSEO law is to allow students to take classes in an area not available
at the District, in accordance with designated procedures. The Appellant may not use the PSEO
law to pay for J.Z.’s education by picking and choosing which parts of the PSEO law she wants
to apply.

/s/ Kristy M. Latta
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APPELLANTS

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served
upon all parties to the above cause to each of the attorneys of record
herein at their respective addresses disclosed on the pleadings, on
December 30, 2016

By □ U.S. Mail □ Fax
☐ Hand Delivery □ Overnight Carrier
☐ Electronically through CM-ECF □ E-mail
☐ Electronically through Efile

Signature /s/ Kristy M. Latta